IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 6TH FEBRUARY 2007 / 17TH MAGHA 1928

Crl.MC.No. 682 of 2006()

AGAINST THE ORDER IN IA 1054/05 IN OS.259/2005 of
SUB DIVISIONAL MAGISTRATE, CHENGANNUR, ALAPUZHA

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PETITIONER:

VILASINI, OMANASSERIL, ALA VILLAGE,
CHENGANNUR, ALAPPUZHA.

BY ADV. SRI.P.VINODKUMAR

RESPONDENTS:
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1. THE REVENUE DIVISIONAL OFFICER & SUB DIVISIONAL MAGISTRATE, CHENGANNUR, ALAPPUZHA.

2. T.C.SAMUEL, THAZHASSERIL VEETTIL, ALA VILLAGE, CHENGANNUR, ALAPPUZHA.

3. STATE OF KERALA, REPRESENTED BY THE PUBLIC PROSECUTOR, HIGH COURT OF KERALA, ERNAKULAM.

R1 & 3 BY PUBLIC PROSECUTOR SRI. GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 06/02/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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Crl.M.C.No. 682 of 2006

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Dated this the 6th day of February, 2007

O R D E R

The petitioner has come before this Court complaining about the procedure adopted by the Sub Divisional Magistrate, who allegedly is proceeding under Chapter X (B) (Section 133) Cr.P.C.

2. The grievance of the petitioner is that there is no public right in respect of the pathway and in these circumstances proceedings under Section 133 Cr.P.C. is not warranted at all.

3. The learned Public Prosecutor was requested to take instructions. The learned Prosecutor submits that the proceedings under Chapter X B have not been initiated at all. The Sub Divisional Magistrate has received a complaint and he is making enquiries at the pre-conditional order stage. If it is found to be necessary, then only a conditional order under Section 133 shall be passed. Thereafter procedure in accordance with law shall be followed. Because of the pendency of this proceedings before this Court, no further enquiry has been conducted and no decision has been taken as to whether a conditional order should or should not be passed.

2. I am, in these circumstances, satisfied that no directions need be issued in this Crl.M.C. now. It is for the Sub Divisional Magistrate to consider whether a conditional order deserves to be passed. If one is passed, certainly the petitioner will have the right to appear before the Sub Divisional Magistrate and show cause against the conditional order. If he denies existence of public right in respect of the pathway in question, needless to say, enquiry under Section 137 Cr.P.C. will have to be conducted and appropriate order passed before proceeding to the stage of enquiry under Section 138 Cr.P.C.

3. With the above observations, this Crl.M.C. is dismissed.

(R. BASANT)
Judge

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